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7 **UNITED STATES DISTRICT COURT**
8 **WESTERN DISTRICT OF WASHINGTON**
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10 RETAIL MANAGEMENT SOLUTIONS,)
11 LLC,) No.
12 Plaintiff,)
13 v.) COMPLAINT
14 AUTO~STAR COMPUSYSTEMS, INC.,)
15 Defendants.)
_____)

16 Plaintiff Retail Management Solutions, LLC ("RMS") alleges the following:

17 **PARTIES**

18 1. Plaintiff, Retail Management Solutions, LLC, is a limited liability company
19 duly organized and existing under the laws of the State of Washington, with its principal place
20 of business located in Thurston County, Washington. At all times relevant, Plaintiff was in
21 the business of licensing and servicing of point of sale technology systems for retail
22 pharmacies.

23 2. Defendant, Auto~Star Compusystems, Inc. ("Auto~Star"), is a corporation
24 with its principal place of business in Medicine Hat, Alberta, Canada. Based on information
25 and belief, Auto~Star is duly organized and existing under the laws of the Province of
26 Alberta, Canada. At all times relevant, Auto~Star was in the business of developing and

COMPLAINT - 1

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1 licensing state-of-the-art point of sale and retail management software, and conducted
2 business in the State of Washington.

3 JURISDICTION

4 3. This Court has diversity jurisdiction over this action pursuant to 28 U.S.C. §
5 1332 because the Plaintiff's principal place of business is in Washington State, Defendant is
6 incorporated and headquartered in Alberta, Canada, and the amount in controversy exceeds
7 \$75,000.

8 ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

9 4. On or about November 5, 2004, RMS and Auto~Star entered into a Software
10 Master Distribution Agreement ("Agreement") by which RMS, among other things, obtained
11 a license from Auto~Star allowing RMS to sell and service to RMS's pharmacy customers,
12 Auto~Star's most current version of certain computer software programs for the pharmacy
13 vertical market ("Software").

14 5. Soon after the effective date of the Agreement, RMS began to sell the Software
15 to its pharmacy customers and service the software pursuant to the terms of the Agreement.
16 The Agreement has not been canceled or terminated and continues in full force and effect as
17 of this date. RMS continues to sell and service the Software as of this date.

18 6. As part of its marketing efforts promoting the Software, Auto~Star represented
19 and continues to represent, among other things, that Auto~Star "provides frequent updates to
20 its solutions to insure that customers have access to the most recent technology on the market"
21 and that Auto~Star "strives to provide its client base with timely upgrades and new versions
22 of its core product." (Quotes taken from Auto~Star website.)

23 7. On or about August, 2007, Auto~Star sent RMS a notice advising RMS that
24 "printing partial or entire credit card numbers and expiry dates on customer receipts" violated
25 the Fair and Accurate Credit Transactions Act ("FACTA"). The notice further instructed
26 RMS how to modify the Software in order to remove the expiration date from the point of sale

1 credit card receipts. As soon as RMS received the notice, it modified the Software to ensure
2 compliance with FACTA.

3 8. On or about 2008, Auto~Star distributed to its Master Distributors, including
4 RMS, a software installation CD (version 8.0) that updated the Software so that it would not
5 print credit card numbers and expiration dates on customer receipts. Version 8.0 of the
6 Software effectively complied with the requirements of FACTA. RMS immediately began
7 using version 8.0 of the Software as soon as it was available.

8 9. On or about January, 2011, Park Nicolett Health Services ("Park Nicolett")
9 purchased the Software from RMS and entered into a Sales & Software License Agreement
10 ("Park Nicolett Agreement") with RMS. The Park Nicolett Agreement is in a form drafted
11 and approved by Auto~Star. The Park Nicolett Agreement allows Park Nicolett to, among
12 other things, utilize the Software in its retail pharmacy stores. The Park Nicolett Agreement
13 has not been canceled or terminated and continues in full force and effect as of this date.

14 10. The Park Nicolett Agreement requires, among other things, that RMS install
15 the Software for Park Nicolett and maintain the Software during the term of the Park Nicolette
16 Agreement.

17 11. In 2011, RMS installed the Software in Park Nicolett's retail pharmacy system
18 the most current updated version of the Software (version 8.1.2). Unknown to RMS, software
19 version 8.1.2 did not comply with FACTA and instead allowed point of sale receipts to print
20 the credit card expiration dates.

21 12. Because Auto~Star had previously corrected the Software with its updated
22 version 8.0, so that it no longer would print retail receipts in violation of FACTA, RMS
23 reasonably assumed that the later, updated version of the Software, version 8.1.2, was in full
24 compliance with FACTA. Auto~Star failed to notify RMS that version 8.1.2 of the Software
25 did not comply with the requirements of FACTA.
26

1 13. In September 2012, Park Nicolett notified RMS that Park Nicolett had been
2 sued in a class action lawsuit filed in the United States District Court of Minnesota ("Class
3 Action"). The plaintiff in the Class Action alleged that a receipt issued by Park Nicolett on
4 July 26, 2012, at one of Park Nicolett's retail pharmacies, included the printed credit card
5 expiration date in violation of FACTA. Park Nicolett demanded that RMS pay for all costs
6 and damages incurred by Park Nicolett resulting from the Class Action, because the FACTA
7 violations alleged by the Class Action plaintiff were caused by Auto~Star's Software sold and
8 maintained by RMS.

9 14. On April 1, 2013, Park Nicolett entered into a settlement agreement with the
10 Class action plaintiff ("Settlement") subject to final approval by the United States District
11 Court. The United States District Court approved the Settlement on September 11, 2013. As
12 of this date, RMS has paid a partial amount of Park Nicolette's costs arising out of the Class
13 Action lawsuit and obligations required by the terms of the Settlement. Park Nicolett
14 continues to claim damages against RMS for all of its litigation costs and obligations required
15 by the Settlement.

16 **FIRST CAUSE OF ACTION**
17 **(Breach of Contract)**

18 15. Plaintiff realleges and incorporates by reference each and every allegation
19 contained in Paragraphs 1 through 14 of this Complaint as though fully set forth herein.

20 16. Pursuant to the terms of the Agreement, Auto~Star was obligated to provide
21 the Software in its "most current version." Section 1 (f) of the Agreement provides the
22 following:

23 *"Product"* and *"Products"* shall mean the most current version of
24 Developer's computer software programs for the pharmacy vertical market
25 in machine readable object code as listed on Exhibit A hereto (the
26 *"Software"*) and Developer's most current proprietary, copyrighted User
Manuals in electronic form associated therewith. The term *"Product"* shall
include all modifications and enhancements to such computer programs as
provided by Developer, and all authorized back-up or archival copies.

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2 17. Section 8 (d) of the Agreement requires that Auto~Star provide RMS with
3 maintenance and support for the Software.

4 18. In 2011, Auto~Star provided RMS with Software version 8.1.2, which was
5 installed in Park Nicolett's retail pharmacy system. Based on information and belief,
6 Software version 8.1.2 was the then most current version of the Software and did not include
7 all prior enhancements and updates to the Software in breach of Sections 1(f) and 8(d) of the
8 Agreement.

9 19. Section 1 (g) (iii) of the Agreement requires Auto~Star to provide RMS with
10 "updates, enhancements, and new versions" of the Software.

11 20. Prior to Auto~Star's development of Software version 8.1.2, the Software
12 incorporated updates and enhancements to ensure that the Software was compliant with
13 FACTA. Software version 8.1.2 did not include such prior updates and enhancements and it
14 failed to comply with FACTA in breach of Sections 1 (g), 6 and 8 (a) of the Agreement.

15 21. Auto~Star's breaches of the Agreement proximately caused damages to RMS
16 in an amount greater than \$75,000, to be proved at trial.

17 22. According to the terms of the Agreement (Section 4), RMS was required to
18 submit its proposed standard form customer agreement for approval by Auto~Star. RMS
19 submitted its standard form customer agreement to Auto~Star's and Auto~Star approved
20 RMS's standard form which included, among other things, a requirement that RMS indemnify
21 the customer for the negligence of RMS or for any claims arising out of or related to the
22 Software. Such claims by RMS's customers, including Park Nicollet, were reasonably
23 foreseeable by Auto~Star at the time that it entered into the Agreement with RMS.

24 23. The Agreement (at Section 16 (f)) provides that "the prevailing party shall be
25 entitled to reasonable attorney's fees and all costs of proceedings incurred in enforcing this
26

1 Agreement." RMS is entitled to its reasonable attorney's fees and costs incurred in the
2 prosecution of this action.

3 **SECOND CAUSE OF ACTION**
4 **(Breach of Warranty)**

5 24. Plaintiff realleges and incorporates by reference each and every allegation
6 contained in Paragraphs 1 through 23 of this Complaint as though fully set forth herein.

7 25. Pursuant to the terms of the Agreement (at Section 10 (a)) Auto~Star
8 warranted that the Software would "perform in substantial conformity to the product
9 description set forth in the Documentation that accompanies the Product, or as it may exist
10 from time to time."

11 26. When Auto~Star issued Software version 8.0, on or about 2008, Auto~Star
12 represented that Software version 8.0, had been enhanced and updated so that it no longer
13 would allow the printing of the expiration date on credit card receipts, in compliance with
14 FACTA. Version 8.0 did in fact comply with FACTA.

15 27. When Auto~Star issued Software version 8.1.2 in 2011, Auto~Star breached its
16 warranty because version 8.1.2, did not conform to Auto~Star's prior written assurances that
17 the Software was fully compliant with FACTA.

18 28. Auto~Star's breach of warranty proximately caused damages to RMS in an
19 amount greater than \$75,000, to be proved at trial.

20 29. The Agreement (at Section 16 (f)) provides that "the prevailing party shall be
21 entitled to reasonable attorney's fees and all costs of proceedings incurred in enforcing this
22 Agreement." RMS is entitled to its reasonable attorney's fees and costs incurred in the
23 prosecution of this action.

1 **PRAYER FOR RELIEF**

2 1. For judgment against Auto~Star for damages in excess of \$75,000.00, in an
3 amount according to proof at trial;

4 2. For judgment against Auto~Star for reasonable attorneys' fees and costs
5 according to the terms of the Agreement; and

6 3. For such other and further relief as the Court may deem just and equitable.

7 DATED this day of May 21, 2014.

8 VANDEBERG JOHNSON & GANDARA, LLP

9
10 By Don Hoden by JG

11 Daniel Gandara
12 WSBA No. 8635
13 Attorneys for Plaintiff
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